



CITY OF DALY CITY

Department of Water and Wastewater Resources

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Patrick Sweetland, Director

July 8, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Ste. 1400
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Subject: MRP 2.0 TENTATIVE ORDER

The City of Daly City appreciates the opportunity to comment on the Tentative Order for the reissued NPDES Municipal Regional Permit (MRP 2.0) released by the San Francisco Bay Regional Water Quality Control Board. Daly City recognizes and wishes to extend its compliments and appreciation to Regional Board staff under the direction of Dr. Tom Mumley for their efforts in bringing forward and working with agency staff. This collaboration is expected to continue long into the future.

Daly City's comments reflect the importance of developing permit requirements that are flexible, practical and cost effective in meeting the challenges of water quality protection in our local creeks and San Francisco Bay. Our intent in providing these comments is to contribute toward a continued constructive dialog that will result in additional permit revisions that provide a clear and feasible pathway for Daly City and all other permittees to attain compliance. Our letter focuses on our highest priority areas of local concerns, Provision C.3 New Development and Redevelopment; C.10 Trash Load Reduction and C.11/12 Mercury and PCB Controls. For detailed comments on other sections of the permit, please refer to the comment letter submitted by the San Mateo Countywide Pollution Prevention Program (SMCWPPP) which Daly City's concurs and supports. In addition, Daly City has reviewed the transcript from the June 10, 2015 Regional Board MRP 2.0 Workshop and concurs with the public agency speakers and program consultants' comments toward improving upon the Tentative Order. Daly City's comments are as follows:

C.3 New Development and Redevelopment

The provision within C.3.b to require previously approved local projects that have not yet begun construction before MRP 2.0 takes effect to then comply with provisions C.3.e and C.3.d on LID Treatment and sizing requirements is exceptionally problematic. Besides putting project developers into untenable double jeopardy, it risks local agencies into permit non-compliance. At issue is whether local agencies have legal authority to compel approved projects into compliance after the fact, and whether such action is advisable. When reviewing this provision with our City Attorney, it is acknowledged that the approval of a final map or parcel map does not in itself confer a vested right to develop. There is no vested right to develop until actual building or other permits for identifiable buildings have been issued. However, Regional Board staff should review Government Code Section 66474.2 which states that the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards **in effect** at the time the vesting tentative map is approved or conditionally approved. Regional Board staff should also

review Government Code Section 66498.1 which states the approval of a vesting tentative map expressly confers a vested right to proceed with a development in substantial compliance with the ordinances, policies, and standards in effect the time the application is deemed complete. Daly City would argue it would be more appropriate to focus resource compliance on projects that come before our planning process after MRP 2.0 adoption.

One of the most challenging portions of C.3 pertains to C.3.j.1 requiring permittees to develop a Green Infrastructure (GI) Plan. Current language stipulates such a plan be developed and approved by local governing bodies within one year of MRP 2.0 adoption. This timeframe is exceptionally short in what all parties recognize as being an exceptionally complex and time-intensive process requiring considerable interdepartmental coordination and resource allocation among staff. Daly City understands the GI Plan must include mechanisms to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7 and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27 and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

It is Daly City's considered opinion the timeframe as set forth is unrealistic. It would be appropriate to amend this requirement for the entire term of the permit to complete the GI Plan as now envisioned.

C.10 Trash Load Reduction

The proposed 70% load reduction by 2017 as now set forth, let alone the "no adverse effect" date of 2022 is increasingly challenging. While Daly City understands current 40% compliance evaluations by Regional Board staff are preliminary and are being re-evaluated, it would be appropriate to extend the 70% load reduction schedule at least to 2018. In this way, a clear and feasible means toward achieving trash load reductions can be understood, implemented, and compliance attained. Other, more specific C.10 comments submitted by the SMCWPPP are endorsed and not expanded upon in this letter.

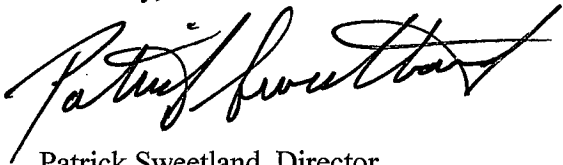
C.11 Mercury Controls/C.12 PCBs Controls

Provisions C.11a-c Mercury Controls in the Tentative Order generally parallel C.12.a-c PCBs Controls so our comments cover both. Generally, any time a numeric TMDL approach is applied to a stormwater permit, Daly City takes pause to consider the potential ramifications. Numeric permit limitations, regardless of the source, have no place in a stormwater permit which is premised upon application of Best Management Practices. Daly City objects to the TMDL approach as now proposed. PCBs and Mercury are legacy pollutants. Public comments by Jon Konnan of EOA at the June 10 Regional Board Workshop were highly instructive on this issue. PCBs are widely dispersed into soils and sediments. Efforts within the Bay Area have identified a small number of "hot spots" which are under separate clean up orders from other agencies including the Regional Board, EPA and DTSC. Mostly, these sites are generally out of the control of local agencies. Now, local agencies must contend with a Tentative Order which is highly uncertain yet places agencies at considerable risk should numeric limits not be achieved. The issue of PCBs and Mercury is much larger in scope than MRP 2.0 and the compliance pathway expected by Regional Board staff is less than clear. The load reductions sought should at the very least be incorporated into a Best Management Practice when suspect buildings are demolished.

The extent of PCBs in caulking or weatherproofing is unknown. Equally unknown is when such buildings would be demolished. At the very least, a Best Management Practices approach could serve as an equivalent method to bridge how such legacy pollutants can be addressed to serve water quality concerns.

I trust you will find these comments helpful toward continued refinements on the Tentative Order toward the development of a meaningful and achievable MRP 2.0.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Sweetland", written in a cursive style.

Patrick Sweetland, Director
Department of Water and Wastewater Resources

L15-058

cc: Matt Fabry, Coordinator
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